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Viewing cable 05LIMA3416, CUZCO COCA REGULATION - NO LEGAL IMPACT BUT

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- The middle box contains the header information that is associated with the cable. It includes information about the receiver(s) as well as a general subject.
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Reference ID	Created	Released	Classification	Origin
05LIMA3416	2005-08-09 14:18	2011-08-30 01:44	CONFIDENTIAL	Embassy Lima

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This record is a partial extract of the original cable. The full text of the original cable is not available.

C O N F I D E N T I A L SECTION 01 OF 03 LIMA 003416

SIPDIS

E.O. 12958: DECL: 08/03/2015
TAGS: [ASEC](#) [PGOV](#) [SNAR](#) [ETRD](#) [PE](#)
SUBJECT: CUZCO COCA REGULATION - NO LEGAL IMPACT BUT
POLITICAL TENSIONS BUILD

REF: A. LIMA 3264

[1](#)B. LIMA 303...

id: 38244
date: 8/9/2005 14:18
refid: 05LIMA3416
origin: Embassy Lima
classification: CONFIDENTIAL
destination: 05LIMA3264
header:

This record is a partial extract of the original cable. The full text of the original cable is not available.

----- header ends -----

C O N F I D E N T I A L SECTION 01 OF 03 LIMA 003416

SIPDIS

E.O. 12958: DECL: 08/03/2015
TAGS: [ASEC](#) [PGOV](#) [SNAR](#) [ETRD](#) [PE](#)
SUBJECT: CUZCO COCA REGULATION - NO LEGAL IMPACT BUT
POLITICAL TENSIONS BUILD

REF: A. LIMA 3264

[1](#)B. LIMA 3033
[1](#)C. LIMA 2813
[1](#)D. LIMA 2699

Classified By: PolCouns Alex Margulies Reason: 1.4 (b,d)

(U) 1. SUMMARY: The regulation implementing the Cuzco Regional Government's ordinance on coca production/commerce was published in the official gazette on 8/1; it largely

conforms with current national policy. The Cabinet authorized lawsuits challenging the constitutionality of the Cuzco and Huanuco ordinances on coca, which has put Prime Minister Carlos Ferrero, Housing Minister Carlos Bruce and national anti-drug agency DEVIDA director Nils Ericsson at odds with Fernando Olivera (leader of the pro-GOP FIM party, to which Cuzco Regional President Cuaresma belongs). We expect the Constitutional Tribunal to declare the regional ordinances unconstitutional, but the political consequences of the regional governments' pro-coca initiatives remains to be determined. An unofficial Embassy translation of the Cuzco regulation follows in Para 7. END SUMMARY.

12. (SBU) On 8/1 the Regional Government of Cuzco published in the official GOP newspaper "El Peruano" its regulation to implement the coca ordinance previously released on 6/12 (Ref C, D). The regulation declares coca produced in three Cuzco valleys (La Convencion in La Convencion Province, Yanatile in Calca Province, and Kosnipata in Paucartambo Province) to be a botanical resource and part of the regional, natural, biological, cultural, and historical patrimony of Cuzco. The regulation limits the scope of coca to be considered legal to that destined for medicinal, religious, cultural, ceremonial, and chewing purposes. The regulation goes on to limit the production of licit coca to that within the law and to those producers who are legally registered. (COMMENT: The limits established in the regulation essentially reiterate the existing definitions for licit coca production, and do not appear to go beyond current national law. Though the GOP has an outdated list, the issue of who is legally registered will likely be a source of future debate. END COMMENT.) The regulation seeks to promote research on the benefits of coca and calls for a Regional Institute for Scientific Research dedicated to the topic.

3) (C) The GOP filed a challenge to the constitutionality of the Cuzco ordinance with the Constitutional Tribunal (TC) on 7/26 before the regulation was issued. On 8/1 the GOP similarly challenged the constitutionality of the Huanuco regional ordinance (Ref A). The regional governments have 30 days to respond after which the TC convenes a hearing allowing both parties to present their arguments. The Cuzco ordinance hearing is scheduled for 9/26 or 9/27, with the TC expected to issue a decision in October. TC President Javier Alva Orlandi noted in the press that this is the first case of the national government challenging the constitutionality of a regional ordinance. The primary issue will be national versus regional authority over the issue of coca control. On 8/2 President Toledo told the Ambassador that the GOP was not/not going to back down from the case the government has filed with the TC.

4) (C) Fernando Olivera, Peru's Ambassador to Spain and leader of the Independent Moralizing Front (FIM) party, a member of President Toledo's governing coalition, has publicly come to the defense of Cuzco Regional President Cuaresma, also of the FIM party. (COMMENT: Olivera is now in Lima and expected to soon receive a cabinet appointment, most likely Foreign Relations. END COMMENT.) Meanwhile, Prime Minister Carlos Ferrero and Nils Ericsson, the head of the Antidrug Agency, DEVIDA, have publicly criticized the ordinance, while popular Housing Minister Carlos Bruce has threatened to resign if the GOP backs off from its constitutional challenge to the regional ordinances. Press continues to highlight the ongoing political spat between the FIM and GOP leaders punctuated by Olivera calling for Ericsson's resignation.

15. (C) The Ambassador met with Olivera on 8/1. Olivera said that the Cuzco regulation makes clear that the ordinance is in conformity with the national law. The Ambassador told Olivera that he was more concerned with the political than the legal implications of the ordinance. The Ambassador said that Regional President Cuaresma had opened the door for courting the cocaleros -- others were now outbidding him and Cuaresma himself was treating the issue in a populist manner. The Ambassador also deplored divisions on drug policy within the GOP that the Cuzco ordinance had provoked.

16. (C) COMMENT: The regional ordinances will likely be declared unconstitutional by the TC. The political effect of these regional challenges to GOP drug policy remain to be seen. The current infighting within the GOP, between the FIM's Olivera, PM Ferrero/DEVIDA's Ericsson, and the President's Peru Possible Party demonstrates the issue's divisive potential. The cocaleros have been silent in response to the Cuzco regulation, which legally delivers nothing new to them, likely viewing the ordinance itself as a victory. END COMMENT.

17. (U) Begin text of the ordinance:

WHEREAS:

By means of Regional Ordinance number 031-2005-GRC/CRC, dated June 21, 2005, it was determined that the coca leaf is a

natural, biological, cultural, and historical regional patrimony of Cuzco, as well as a botanical resource, integrated into the culture and cosmological vision of the Andean world and to the cultural and medical customs and traditions;

The Ordinance must be implemented through regulatory standards that complement its contents in an appropriate manner in order for it to be fully enforced, in view of the fact that it is a matter which concerns the public and citizens, and since its contents do not transgress any law;

With the authority granted by the Regional Governments Organic Law, Law 27867, amended by Law number 27902, in its Article 40;

RESOLVES:

Sole Article: To Authorize the Regional Ordinance No. 031-2005-GRC/CRC Regulation, which is made up of seven Articles and whose content follows makes up this Executive Regional Decree, is to be published in the "El Peruano" Official Daily.

Transcribe it, record it and notify it.

CARLOS RICARDO CUARESMA SANCHEZ
President

REGULATIONS

Regional Ordinance
Number 031-2005-GRC/CRC
Regarding the Coca Leaf

Article 1: Purpose of the Regulation

The purpose of this regulation is to set complementary standards to aid in the appropriate application of Regional Ordinance number 031-2005-GRC/CRC, that determines that the coca leaf is a natural, biological, cultural, historical, and regional patrimony of Cuzco, as well as a botanical resource. This regulation has been enacted in accordance with provisions included in Law 27867, Organic Law of Regional Governments.

Article 2: Scope of Application

The scope of its application are the production areas referred to in Article 2 of the Regional Ordinance, found in the Department of Cuzco and encompasses the coca valleys of: La Convencion, in the province of the same name; Yanatile in the province of Calca and Kosnipata in the province of Paucartambo.

Article 3: Identification of the Coca Valleys or Basins

Coca valleys are areas called by that name, which are located in: La Convencion in the province of the same name; Yanatile in the province of Calca and Kosnipata in the province of Paucartambo, all of them belong to the Department of Cuzco and are acknowledged to be coca basins, in accordance with legal norms and the demarcation made at a national level, which ENACO S.A. is responsible for identifying.

Article 4: The Legal Nature of the Coca Leaf Production

The legal nature of the coca leaf production is limited to the valleys which are specifically mentioned in the Ordinance and refers to those that are designed for medical, religious, cultural and ceremonial use, as well as traditional chewing, practiced in the Peruvian Andean Region, whose purposes are protected by the regional regulation.

Article 5: Limits to the Production of Coca Leaf

The production of coca leaf must not exceed the limits set by the appropriate legal regulations and covers those producers who are registered in accordance to law.

Article 6: Promotion and Incentives for the Research on the Attributes of the Coca Leaf

The promotion and incentives granted to foster research of the attributes of the coca leaf, shall be complemented subject to available financial and economic resources provided by the Cuzco Regional Government, and in compliance with the Agreed Strategic Regional Plan for Cuzco through 2012. This research shall promote its beneficial, medical, scientific and nourishing aspects, and shall foster its industrialization in those aspects with the participation of the private sector, as well as the cooperation of professional and university institutions with a bearing on that issue.

Article 7: Establishment of the Regional Institute for Scientific Research

In order to foster the promotion and research of the attributes of the coca leaf, the establishment of the Regional Institute for Scientific Research will be promoted, with the participation of the Cuzco universities, the producers, coca leaf research institutions, the civil society

and country and city dwellers, devoted to the research and
promotion of the benefits of the coca leaf.

End Text.
STRUBLE

=====CABLE ENDS=====